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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/554,984	05/23/2000	Daniel H. Maes	2870/287	1797
7590	08/11/2006		EXAMINER	
KAREN A. LOWNEY, ESQ. ESTEE LAUDER COMPANIES 125 PINELAWN ROAD MELVILLE, NY 11747			PRYOR, ALTON NATHANIEL	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/554,984	MAES ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alton N. Pryor	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 April 2006.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2,4,6,8-13,15-26,28-33,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2,6,8,10,15-17,20,23,26,28-30,33 and 36 is/are rejected.
- 7) Claim(s) 4,9,11-13,18,19,21,22,24,25,31,32,35 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. Office is corrected. Claims 29,30, and 32 should not have been rejected with respect to Simon on record.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 15,28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon et al (US 5932234; 8/3/99). Simon teaches a composition for skin application comprising a number of actives. The actives include compounds such as Asiatic acid (protease inhibitor) and dihydroxyacetone (tanning agent) and vitamin D derivative (cell differentiation enhancer). See column 5 line 49 – column 6 line 38. Simon does not exemplify an invention comprising all three compounds. However, it would have been obvious to one having ordinary skill in the art to make such an invention. One would have been motivated to do this since Simon suggests the combination.

Claims 2,6,8,16,17,20,23,26,33,36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon et al as applied to claims 15,28 above, and further in view of Subbiah (US 6150381; 11/21/00). See Simon's 35 USC 103(a) rejection above. Simon teaches all that is recited by claims 2,6,8,16,17,20,23,26,33,36 except for the invention

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comprising sclareolide and instant amounts of ingredients. However, Subbiah teaches a composition for skin application comprising sclareolide. See column 3 line 20 – column 4 line 65. It would have been obvious to one having ordinary skill in the art to modify the invention of Simon to include sclareolide. One would have been motivated to do this since both inventions are applied topically to treat dermal disorders.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simon et al as applied to claims 15,28 above, and further in view of Elias et al (US 5885565; 3/23/99). See Simon's 35 USC 103(a) rejection above. Simon teaches all that is recited by claim 10 except for the invention comprising cholesterol. However, Elias teaches a composition for skin application comprising cholesterol sulfate. See claim 1. It would have been obvious to one having ordinary skill in the art to modify the invention of Simon to include cholesterol sulfate. One would have been motivated to do this since both inventions are applied topically to treat dermal disorders.

With respect to the above rejections, Applicants' primary argument is that Simon does not specifically teach a combination of Asiatic acid (protease inhibitor) and dihydroxyacetone (tanning agent) and vitamin D derivative (cell differentiation enhancer). However, the Examiner maintains that Simon does teach the three components as possible actives and that Simon does suggest mixtures of the actives. For this reason, the 103(a) rejections on record are maintained.

***Claim Objection***

Claims 4,9,11-13,18,19,21,22,24,25,31,32,35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in

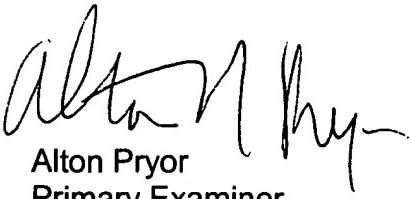
independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the invention comprising the limitations of the objected claims.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton N. Pryor  
Primary Examiner  
AU 1616